

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the License of Sharon Martin
1134 Jefferson Street NE
Minneapolis, MN 55413-1401
to provide child foster care under Minnesota
Rules, parts 9545.5105 to 9545.0445

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

Administrative Law Judge Bruce H. Johnson conducted a hearing in this contested case proceeding beginning at 9:30 a.m. on October 28, 1998, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. The record closed at the end of the October 28th hearing.

Vicki Vial-Taylor, Assistant Hennepin County Attorney, Suite 1210 Health Services Building, 525 Portland Avenue, Minneapolis, Minnesota 55415, appeared at the hearing as attorney for Hennepin County (the County) and the Minnesota Department of Human Services (DHS). Sharon Martin, 134 Jefferson Street, N.E., Minneapolis, Minnesota 55413-1401, was not represented by an attorney but rather appeared at the hearing on her own behalf.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after reviewing the administrative record. The Commissioner may adopt, reject or modify these Recommendations. Under Minnesota law,^[1] the Commissioner may not make his final decision until after the parties have had access to this report for at least ten days. During that time, the Commissioner must give each party adversely affected by this report an opportunity to file exceptions and present argument to him. Parties should contact the office of David S. Doth, Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155, to find out how to file exceptions or present argument.

STATEMENT OF ISSUE

Whether Ms. Martin's license to provide child foster care should be revoked because two of her own children, who had been living with her, became disqualified because they committed crimes and because Ms. Martin showed a lack of the personal qualities that are necessary for a foster care provider because two neighbors sought restraining orders against her.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. At all times important to this proceeding, Ms. Martin rented the upper floor of a duplex dwelling located at 1134 Jefferson Street, N.E., Minneapolis, Minnesota 55413-1401. She had started living there sometime before September of 1994. As of February 19, 1998, two of her own children were living with her — a daughter, Taysha Nichelle Martin, 26 years old, and a son, M. M., 17 years old.^[2]

2. For at least three years prior to its revocation on July 16, 1998, Ms. Martin held a license issued by DHS to provide child foster care.

3. In about September of 1994, the lower apartment of the duplex where Ms. Martin lived became vacant, and Ms. Martin suggested that Pamela Rime, a person with whom Ms. Martin had become friendly at work, see her landlord about renting the lower apartment. After that, Ms. Rime applied for and rented the lower apartment.^[3]

4. On March 9, 1998, their landlord filed an unlawful detainer action to evict Ms. Rime. It was Ms. Rime's belief that Ms. Martin had prompted the landlord to do that, and the two had a falling out.^[4]

5. On March 25, 1996, Ms. Rime filed a Petition for Harassment Restraining Order, accusing Ms. Martin of threatening her with violence and engaging in other harassing conduct.^[5] The Hennepin County District Court dismissed that proceeding on July 8, 1996, for failure to prosecute.^[6]

6. Ms. Martin did not threaten Ms. Rime with violence or engage in other harassing conduct toward her.

7. Sometime before May of 1997, the lower apartment of the duplex where Ms. Martin lived again became vacant, and Ms. Martin suggested that Tijuana Green, another person whom Ms. Martin had met at work, see her landlord about renting the lower apartment. After that, Ms. Green applied for and rented the lower apartment.

8. Sometime before May 25, 1997, Ms. Green became involved romantically with Ms. Martin's minor son, M. M., and Ms. Martin and Ms. Green had some heated arguments over that.^[7]

9. On June 4, 1997, Ms. Green filed a Petition for Harassment Restraining Order against Ms. Martin, accusing her of threatening to harm Ms. Green physically and engaging in other harassing conduct.^[8] The Hennepin County District Court also dismissed that proceeding on July 14, 1997, for failure to prosecute.^[9]

10. Ms. Martin did not threaten Ms. Green with violence or engage in other harassing conduct toward her.

11. On July 30 and 31, 1997, Ms. Martin's minor son, M. M., who was then living with Ms. Martin, was charged in Hennepin County Juvenile Court with two counts of Burglary in the 1st degree, Assault in the 5th degree, Theft of a Motor Vehicle, Obstruction of Legal Process Arrest, and Hit and Run.^[10] On January 27, 1998, M. M. admitted to committing one count of Burglary in the 1st degree, and the Court adjudicated him delinquent on that basis.^[11]

12. On November 26, 1997, M. M. and Taysha Martin became involved in an altercation at Ms. Martin's home. During the course of that dispute, both became physically violent with each other, and both were charged with 5th degree Assault.^[12]

13. By letters dated February 19, 1998, the County notified Ms. Martin's son and daughter, who were then still living with her, that they were both disqualified from having direct contact with persons served by DHS-licensed programs.^[13] The County also informed both children and Ms. Martin of their right to request reconsideration of that decision.^[14]

14. Neither Ms. Martin nor her two children requested reconsideration of the disqualifications of M. M. and Taysha Martin or responded to the County's notifications in any other way.

15. By letter dated July 16, 1998, DHS revoked Ms. Martin's license to provide child foster care.^[15] DHS gave two reasons given for the revocation. First, two persons disqualified from having direct contact with recipients of child foster care — that is, M. M. and Taysha Martin — were residing in her home in violation of program rules.^[16] Second, the affidavits attached to the temporary restraining orders that had been filed against her indicated that she was unable to deal with anger, frustration, and conflict appropriately and that she was unable to resolve problems constructively when difficulties arose.^[17]

16. By letter dated July 23, 1998, Ms. Martin appealed the decision of DHS to revoke her child foster care license and requested a hearing.^[18] This caused the Commissioner to begin this appeal proceeding.

17. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Minnesota law^[19] gives the Administrative Law Judge and the Commissioner of Human Services authority to consider and rule on the issues in this contested case proceeding.

2. The Notice of and Order for Hearing was proper in all respects, and the County and DHS have complied with all of the law's other substantive and procedural requirements.

3. Minnesota law^[20] establishes the parties' burdens of proof and of producing evidence in proceedings to appeal revocations of family foster care licenses:

[T]he commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof in hearings . . . shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.

4. Under the child foster care program's rules,^[21] the Commissioner is required to take the following information into consideration before issuing a negative licensing action:

- A. the laws or rules that have been violated;
- B. the nature and severity of each violation;
- C. whether the violation is recurring or nonrecurring;
- D. the effect of the violation on persons served by the program;
- E. an evaluation of the risk of harm to persons served by the program;

F. any evaluations of the program by persons served or their families;

G. relevant facts, conditions, and circumstances concerning the operation of the program; and

H. any aggravating or mitigating factors related to the violation.

The Commissioner is obliged to revoke a license “when continued operation of the program is not in the best interest of persons served by the program and would pose an unacceptable risk of harm to persons served by the program.”^[22]

5. Minnesota law specifies that no individual having a disqualification may be retained in a position involving direct contact with the persons served by the program.^[23] Moreover, program rules^[24] require DHS to revoke a family foster care license where a person residing in the household has a disqualification that has not been set aside by the Commissioner.

6. The County notified Ms. Martin of the individual disqualifications of her son and daughter by letters dated February 19, 1998. Neither she nor her children made requests within thirty days for those decisions to be reconsidered, as required by program rules.^[25] Failure to request reconsideration makes those disqualifications final.

7. Although Taysha Martin has left Ms. Martin’s home, M. M. continues to live there and continues to have a program disqualification that has not been set aside by the Commissioner.

8. Given his history of delinquency, including violence, the presence of M. M. in Ms. Martin’s home is not in the best interest of persons served by the program and poses an unacceptable risk of harm to persons served by the program in that home.

9. The Commissioner has demonstrated reasonable cause for revoking Ms. Martin’s license based on M. M.’s admission that he committed first degree burglary and his resultant disqualification. Under Minnesota law,^[26] Ms. Martin has the burden of proof to demonstrate, by a preponderance of the evidence, that she has complied fully with the statutes and rules that apply to the program, and she admits that having M. M. living at her home violates those statutes and rules. DHS was therefore justified in revoking her child foster care license for that reason.

10. DHS’ second reason for revoking Ms. Martin’s license was that that she unable to deal with anger, frustration, and conflict appropriately and that she was unable to resolve problems constructively when difficulties arose in violation of other program rules.^[27] The affidavits and police report attached to Ms. Rime’s and Ms. Green’s petitions for restraining orders against Ms. Martin gave the Commissioner reasonable cause to believe that Ms. Martin had also violated those other program rules. But at the hearing Ms. Martin demonstrated by a preponderance of the evidence that the misconduct alleged in those affidavits did not, in fact, occur. DHS was therefore not

justified in revoking her child foster care license for violating Minnesota Rules, part 9545.0090, paragraphs B (6) and (14).

11. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

12. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

Based upon the these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge therefore respectfully recommends that Ms. Martin's license to provide child foster care be revoked because she violated Minnesota Rules, part 9543.3060, subpart 1 B, but not because she violated Minnesota Rules, part 9545.0090, paragraphs B (6) and (14).

Dated this 4th day of November 1998.

BRUCE H. JOHNSON
Administrative Law Judge

Reported: Tape Recorded (three tapes); No Transcript Prepared.

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NOTICE

Under Minnesota law,^[28] the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

Ms. Martin does not deny that her children committed the criminal offenses with which they were charged, that it was appropriate for the County to find them to be disqualified persons under the law, or that it was appropriate for DHS to revoke her child foster care license because her son continues to live with her. But she does dispute the charge that she was unable to deal with anger, frustration, and conflict appropriately and that she was unable to resolve problems constructively when difficulties arose in violation of Minnesota Rules, part 9545.0090, paragraphs B (6) and (14).

The second charge is based entirely on statements made by Pamela Rime and Tijuana Green in the affidavits that were attached to their petitions seeking temporary restraining orders against Ms. Martin. Both of their petitions for harassment restraining orders were ultimately dismissed by Hennepin County District Court for failure to prosecute, and the testimony at the hearing disclosed that both individuals had motives for bringing false charges against Ms. Martin. The police report attached to Ms. Rime's affidavit does not necessarily corroborate her statement. It appears only to recite what Ms. Rime herself told the police, and does not seem to reflect the results of any independent fact finding inquiry by the police. On the other hand, Ms. Martin testified under oath that she did not make the statements or engage in the conduct that Ms. Rime and Ms. Green claimed. Her testimony was subject to cross-examination and further questioning by the Administrative Law Judge. Moreover, the Administrative Law Judge found her to be a credible witness. So, even though DHS may have had reasonable cause to believe that the restraining order incidents showed that Ms. Martin was unable to deal with anger, frustration, and conflict appropriately and that she was unable to resolve problems constructively when difficulties arose in violation of program rules, Ms. Martin was able to establish by a preponderance of the evidence that this was not the case.

But DHS and the County also argue that Ms. Martin's own testimony established, among other things, that she had a history of forming friendships with persons who had undesirable influences on her own children. They claim this and other facts demonstrate unsatisfactory compliance on her part with other program requirements listed in Minnesota Rules, part 9545.0090, or in other program rules. Even if this were the case, DHS did not specifically charge her in the Notice of and Order for Hearing with unsatisfactory compliance with other parts of that rule or any other rule. Minnesota law requires that a notice of hearing state the issues involved.^[29] It also requires agencies to include in a notice of hearing a "citation to the relevant statute or rules allegedly violated or which control the outcome of the case."^[30] The reason for this is that due process requires that persons facing negative licensing actions only be called to account for the rule violations with which they have been charged. To decide otherwise would deprive them of their right to a reasonable opportunity to present a complete and meaningful defense.^[31] Here, the County and DHS have never even identified which other licensing rules they claim Ms. Martin may have violated. And it would be inappropriate for the Administrative Law Judge to speculate about possible charges that have not been made. It is for these reasons that the Administrative Law Judge is

recommending that the disqualifications of Ms. Martin's son and daughter form the only basis for revoking her child foster care license.

B. H. J.

^[1] Minnesota Statutes, section 14.61 (1996). (Unless otherwise specified, citations to Minnesota Statutes refer to the 1996 edition.)

^[2] Exhibit D; testimony of Sharon Martin.

^[3] Testimony of Sharon Martin.

^[4] Exhibit I; testimony of Sharon Martin.

^[5] Exhibit I.

^[6] Exhibit I.

^[7] Testimony of Sharon Martin.

^[8] Exhibit J.

^[9] Exhibit J.

^[10] Exhibits A and B.

^[11] Exhibit C.

^[12] Exhibit D.

^[13] Exhibits E and H.

^[14] Exhibits F and G.

^[15] Exhibit L.

^[16] Id.; citing Minnesota Statutes, section 245A.04 and Minnesota Rules, part 9545.0090, paragraph A (1). (Unless otherwise specified, citations to Minnesota Rules refer to the 1997 edition.)

^[17] Citing Minnesota Rules, part 9545.0090, paragraphs B (6) and (14).

^[18] Exhibit M.

^[19] Minnesota Statutes, sections 14.50, 14.57, 14.69, and 245A.01 through 245A.16.

^[20] Minnesota Statutes, section 245A.08, subdivision 3(a).

^[21] Minnesota Rules part 9543.1060, subpart 2.

^[22] Minnesota Rules part 9543.1060, subpart 4.

^[23] Minnesota Statutes, section 245A.04, subdivision 3(f).

^[24] Minnesota Rules, part 9543.3060, subpart 1 B.

^[25] Minnesota Rules, part 9543.3080, subpart 1.

^[26] Minnesota Statutes, section 245A.08, subdivision 3(b).

^[27] Minnesota Rules, part 9545.0090, paragraphs B (6) and (14).

^[28] Minnesota Statutes, section 14.62, subdivision 1.

^[29] Minnesota Statutes, section 14.58.

^[30] Minnesota Rules, part 1400.5600, subpart 2.D.

^[31] Elliott v. Weinberger, 564 F.2d 1219, 1235-36 (9th Cir. 1977, modified on other grounds, Califano v. Yamasaki, 442 U.S. 682 (1979)).